

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMO DEVELOPMENT, LLC,)
AMO MANUFACTURING USA, LLC)
and AMO SALES AND SERVICE,)
INC.,)

Plaintiffs,)

v.)

ALCON VISION, LLC,)
ALCON LABORATORIES, INC. and)
ALCON RESEARCH, LLC,)

Defendants.)

C.A. No. 20-842 (CFC) (JLH)

ALCON INC., ALCON RESEARCH,)
LLC, and ALCON VISION, LLC,)

Counterclaim Plaintiffs,)

v.)

AMO DEVELOPMENT, LLC,)
AMO MANUFACTURING USA,)
LLC, AMO SALES AND SERVICE,)
INC. and JOHNSON & JOHNSON)
SURGICAL VISION, INC.,)

Counterclaim Defendants.)

**PLAINTIFFS' DAUBERT MOTION (NO. 2) TO EXCLUDE TESTIMONY
OF JULIE DAVIS REGARDING NON-INFRINGING ALTERNATIVES**

Pursuant to Federal Rule of Evidence 702, Plaintiffs respectfully move to
exclude testimony and opinions of Defendant Alcon's damages expert, Julie Davis,

relying on the availability of non-infringing alternatives to calculate Plaintiffs' actual damages, as reflected on pages 9, 13, 32-35, and 42-47 of her Rebuttal Report.¹

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

/s/ Brian P. Egan

OF COUNSEL:

Michael A. Morin
Matthew J. Moore
Sarang V. Damle
Rachel Weiner Cohen
Susan Y. Tull
Carolyn M. Homer
Holly K. Victorson
LATHAM & WATKINS LLP
555 Eleventh Street, NW, Suite 1000
Washington, DC 20004
(202) 637-2200

Roger J. Chin
Joseph R. Wetzel
Allison Harms
LATHAM & WATKINS LLP
505 Montgomery Street, Suite 2000
San Francisco, CA 94111
(415) 491-0600

S. Giri Pathmanaban
LATHAM & WATKINS LLP
140 Scott Drive
Menlo Park, CA 94025
(650) 328-4600

Jack B. Blumenfeld (#1014)
Brian P. Egan (#6227)
Anthony D. Raucci (#5948)
1201 North Market Street
P.O. Box 1347
Wilmington, DE 19899
(302) 658-9200
jblumenfeld@morrisnichols.com
began@morrisnichols.com
araucci@morrisnichols.com

*Attorneys for Plaintiffs and
Counterclaim-Defendants
AMO Development, LLC,
AMO Manufacturing USA, LLC,
AMO Sales and Service, Inc. and
Johnson & Johnson Surgical Vision, Inc.*

¹ Pursuant to D. Del. LR 7.1.1, the parties met and conferred on this matter, including Delaware counsel for both the moving party and opposing party, but no agreement could be reached.

P. Anthony Sammi
Rachel Renee Blitzer
LATHAM & WATKINS LLP
1271 Avenue of the Americas
New York, NY 10020
(212) 906-1200

Aaron Macris
LATHAM & WATKINS LLP
200 Clarendon Street
Boston, MA 02116
(617) 948-6000

August 19, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

AMO DEVELOPMENT, LLC,)	
AMO MANUFACTURING USA, LLC)	
and AMO SALES AND SERVICE,)	
INC.,)	
)	
Plaintiffs,)	
)	C.A. No. 20-842 (CFC) (JLH)
v.)	
)	
ALCON VISION, LLC,)	
ALCON LABORATORIES, INC. and)	
ALCON RESEARCH, LLC,)	
)	
Defendants.)	
<hr/>		
ALCON INC., ALCON RESEARCH,)	
LLC, and ALCON VISION, LLC,)	
)	
Counterclaim Plaintiffs,)	
)	
v.)	
)	
AMO DEVELOPMENT, LLC,)	
AMO MANUFACTURING USA,)	
LLC, AMO SALES AND SERVICE,)	
INC. and JOHNSON & JOHNSON)	
SURGICAL VISION, INC.,)	
)	
Counterclaim Defendants.)	

**[PROPOSED] ORDER GRANTING PLAINTIFFS' *DAUBERT*
MOTION (NO. 2) TO EXCLUDE TESTIMONY OF JULIE DAVIS
REGARDING NON-INFRINGEMENT ALTERNATIVES**

Before this Court is Plaintiffs' motion to exclude testimony of Julie Davis
relying on the availability of non-infringing alternatives to calculate Plaintiffs' actual

damages, as reflected on pages 9, 13, 32-35, and 42-47 of her Rebuttal Report. Having reviewed the motion and all related briefing, and for good cause shown, the Court concludes that the testimony at issue fails to meet the requirements imposed by Federal Rule of Evidence 702 and should be excluded.

IT IS HEREBY ORDERED that Plaintiffs' motion is GRANTED.

IT IS SO ORDERED, this ____ day of _____, 2022.

The Honorable Colm F. Connolly
Chief, United States District Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2022, I caused the foregoing to be electronically filed with the Clerk of the Court using CM/ECF, which will send notification of such filing to all registered participants.

I further certify that I caused copies of the foregoing document to be served on August 19, 2022, upon the following in the manner indicated:

John W. Shaw, Esquire
Karen E. Keller, Esquire
Andrew E. Russell, Esquire
David M. Fry, Esquire
SHAW KELLER LLP
I.M. Pei Building
1105 North Market Street, 12th Floor
Wilmington, DE 19801
*Attorneys for Defendants
and Counterclaim-Plaintiffs*

VIA ELECTRONIC MAIL

Jeannie Heffernan, Esquire
Joshua L. Simmons, Esquire
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
*Attorneys for Defendants
and Counterclaim-Plaintiffs*

VIA ELECTRONIC MAIL

Caroline Lourgou, Esquire
KIRKLAND & ELLIS LLP
300 North LaSalle
Chicago, IL 60654
*Attorneys for Defendants
and Counterclaim-Plaintiffs*

VIA ELECTRONIC MAIL

Kristen P.L. Reichenbach, Esquire
KIRKLAND & ELLIS LLP
555 California Street
San Francisco, CA 94104
*Attorneys for Defendants
and Counterclaim-Plaintiffs*

VIA ELECTRONIC MAIL

Noah S. Frank, Esquire
Gregg LoCascio, Esquire
Sean M. McEldowney, Esquire
Kelly Tripathi, Esquire
KIRKLAND & ELLIS LLP
1301 Pennsylvania Avenue, NW
Washington, DC 20004
*Attorneys for Defendants
and Counterclaim-Plaintiffs*

VIA ELECTRONIC MAIL

/s/ Brian P. Egan

Brian P. Egan (#6227)